

12/13/01
122IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON,	:	CIVIL ACTION NO.1:CV-001229
Plaintiff	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
THOMAS DURAN, et al.,	:	
Defendants	:	(JURY TRIAL DEMANDED)

FILED
SCRANTON

DEC 13 2001

PLAINTIFF'S MOTION TO ORDER THE
DEPARTMENT OF CORRECTIONS
AND /OR ITS PERSONNEL
TO COMPLY WITH CLEARLY ESTABLISHED LAWPER _____
DEPUTY CLERK

AND NOW comes the plaintiff Jason E. Benson, respectfully requesting this Honorable to order the Department of Corrections and it's Personnel to Comply with Clearly Established Law; and the plaintiff avers the following in support thereof:

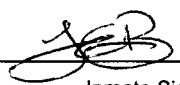
1. In ¶ 8, of plaintiff's Motion for Sanctions for Discovery Abuse and Violations of Professional Conduct, it's expressed, that "The plaintiff cannot stress sufficiently the need of the Court's ruling because, as it stands now, the plaintiff has '-\$10.00 in his inmate account...and the institution is still telling him that he cannot make legal copies,'" and none of the defendant's will be copied on the pleadings unless the Court orders the clerk to do so.

2. In Bounds v. Smith, 430 U.S. 824,828 (1977), the Supreme Court reasoned out the core interests of access to the Court's. It cannot be maintained by any D.O.c's personnel that they do not know anything about the above interests. According to Mr. Kirk A. Bucynski, Business Manager at the institution; "Indigent inmates get no special privileges in regards to copies. In fact, if you have no money on your account, you are not permitted to make copies." See exhibits "A-1,2,3."

3. Mr. Bucynski's, arbitrariness is lucid and reeks of wanton interference. Forexample, he signed his response to plaintiff's request allegedly on (11/30/01)but, it's evident at the top of the page that the request was received on (12/03/01) so, it's impossible for him to have signed his response on the date written. Why would he lie? Suggested answer: He no-doubt, feels it's necessary to hamper plaintiff's progress out of compassion for colleague's Defendant's Ronald Long, and William Ellien. Nonetheless, his actions infer denial of access to the Court's.

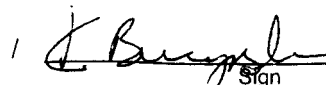
4. The plaintiff knows that his being unable to copy the defendant's on the pleadings, puts undue or unwanted encumbrance upon the Court. This affects plaintiff in two (2) ways/first, he's not able to effectively prosecute his claims and; second, it causes conflict with plaintiff's need to access the Court. Whereas, retaliation is more than likely to come about because the plaintiff related to the Court that it is always in the public interest for government official's including prison personnel, to obey the Constitution. Cf. Washington v. Reno, 35 F.3d 1093,1103 (6th Cir.1994); Duran v. Anaya, 642 F.Supp.527.

5. Furthermore, it's not like the plaintiff is seeking to have his legal motions/responses ^{copied} at the expense of the Department of Corrections. For instance, the money that was spent to buy the copying machine in the law library, was money form the **"Inmate General Welfare Fund,"** and the monies generated from the copiers use, goes right back into the "I.G.W.F.," which came about as a result of the D.O.C's blatant denial of inmate's access to the Court's. See Bounds supra; Crawford-El v. Britton, 523 U.S. 574,584 (1998); Peterkin v. Jeffes, 855 F.2d 1021, 1041 (3rd Cir.1988)(in cases "directly involving prisoners' access to photocopying, an actual injury necessarily occurs by virtue of [the]

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER RECEIVED DEC 03 2001 CA		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) <u>INMATE ACCOUNTS/BUSINESS OFFICE</u>		2. Date: <u>11/28/01</u>	
3. By: (Print Inmate Name and Number) <u>JASON E. BENSON, #DS6483</u>  Inmate Signature		4. Counselor's Name <u>CRIDER</u>	
		5. Unit Manager's Name <u>BURK</u>	
6. Work Assignment		7. Housing Assignment <u>CA/08</u>	
8. Subject: State your request completely but briefly. Give details. <u>I AM AN INDIGENT INMATE CURRENTLY IN THE MIST OF CIVIL LITIGATION. I AM REQUIRED TO MAKE COPIES OF EACH MOTION/BRIEF I SUBMIT TO THE COURTS, AND PROVIDE THEM TO THE DEFENDANTS. MORE OFTEN THAN NOT THESE MOTIONS ADD UP TO 50+ PAGES. TO GET 4 COPIES OF EACH 50+ PAGE MOTION EXCEEDS THE LIBRARY'S LIMIT ON COPIES. CB3.20 IF THE COST OF COPIES EXCEEDS \$3.20, I'M NOT ALLOWED TO MAKE COPIES.</u> <u>PLEASE PLACE ME ON THE INDIGENT INMATE LIST SO THAT I MAY BE ABLE TO MAKE THE APPROPRIATE AMOUNT OF COPIES AS REQUIRED. YOUR SWIFT RESPONSE IS APPRECIATED!</u>			
9. Response: (This Section for Staff Response Only) <u>Indigent inmates get no special privileges in regards to copies. In fact, if you have no money on your account, you are not permitted to make any copies. Indigent inmates may qualify for free stationary as outlined in the DC-ADM 803, Inmate Mail policy. If you wish to pursue that option, you should follow the procedure outlined in the policy. Otherwise, you will have to wait until you have the necessary funds on your account to pay for your copies.</u>			
<u>Kirk A. Bucynski</u> <u>Business Manager</u>			
To DC-14 CAR only <input type="checkbox"/>		To DC-14 CAR and DC-15 IRS <input type="checkbox"/>	

Staff Member Name

Print



Date

11/30/01


DC-804
Part 1

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

SMT-8615-01
GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Sharon M. Burks	FACILITY:	DATE: November 27, 2001
FROM: (INMATE NAME & NUMBER) Mr. Jason Benson DS-6483	SIGNATURE of INMATE: 	
WORK ASSIGNMENT: None	HOUSING ASSIGNMENT: CA/08	
INSTRUCTIONS: 1. Refer to the DC-ADM 804 for procedures on the inmate grievance system. 2. State your grievance in Block A in a brief and understandable manner. 3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.		
A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages. Since November 23, 2001, I have been trying to have my Civil Matter Motion copied four (4) times. But, I've been notified that I cannot go over/exceed \$3.20. My Motion will cost \$4.00 and some change each, totaling at least \$16.00 and a maximum of \$17.60 and that's not including postage. This restriction can cost/cause me to lose my civil matter. Being as though I asked for damages from the defendant's in my matter, I believe it will only be fair to all that I be reimbursed the amount I can/will lose should my case be dismissed because of the fact that I can't get copies and make certain deadlines; i.e., one million dollars \$1,000,000. In addition, I may need to add whomever's responsible as a defendant in my civil matter as a precaution, and I must notify the Court's about this situation.		
B. List actions taken and staff you have contacted, before submitting this grievance. The only people I could speak with about this matter is one of the librarian's.		

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Sharon M. Burks /smb
Signature of Facility Grievance Coordinator

11-30-01

Date

DC-ADM 804, Inmate Grievance System

Attachment B

DC-804

Part 2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001

OFFICIAL INMATE GRIEVANCE
INITIAL REVIEW RESPONSE

GRIEVANCE NO.

SMI-8615-01

TO: (Inmate Name & DC No.)	FACILITY	HOUSING LOCATION	GRIEVANCE DATE
Benson, Jason DS-6483	Smithfield	CA/08	11-27-01

The following is a summary of my findings regarding your grievance:

Mr. Benson,

When the Library is informed by the Business Office that someone is indigent, or has insufficient funds, we cannot make copies for that person unless the Business Manager gives us permission, either verbal or written. When you have legal copies that must be made and have insufficient funds, you must contact the Business Manager to have him assess the matter; he may decide to let you make those copies, but **we must hear it from him first** before we proceed to do so.

Category: Legal/Courts

Cc: Superintendent Varner
Major Norris
DC-15
File

Print Name and Title of Grievance Officer

Renee Lubert CorrLib I

SIGNATURE OF GRIEVANCE OFFICER

Renee A. Lubert

DATE

12-4-01

A-3

PAGE 1
C-A-1008INMATE ACCOUNTS SYSTEM
MONTHLY ACCOUNT STATEMENT10-01-2001
263 SMI

INMATE NUMBER	NAME LAST	FIRST	MI	OLD BALANCE
DS6483	BENSON	JASON	E	-4.31

BATCH #	DATE MO DY YEAR	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
4451	09-06-2001	37 POSTAGE FOR THE WEEK OF 9/6/01	- .80	-5.11
4463	09-07-2001	10 MAINTENANCE PAYROLL PAY PERIOD ENDING 9/1/01	10.08	4.97
4535	09-19-2001	39 LEGAL FEES 1:00-CV-01229 8/21 THRU 9/19	-2.02	2.95
NEW BALANCE AS OF THIS STATEMENT ----->				2.95

PAGE 1
C-A-1008

INMATE ACCOUNTS SYSTEM
MONTHLY ACCOUNT STATEMENT

12-03-2001
274 SMI

INMATE NUMBER DS6483	NAME LAST BENSON	FIRST JASON	MI E	OLD BALANCE -2.32
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BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
4853	11-07-2001	38	INSIDE PURCHASES LIBRARY COPY(S)	-2.40	-4.72
4853	11-07-2001	38	INSIDE PURCHASES LIBRARY COPY(S)	-2.30	-7.02
4929	11-20-2001	37	POSTAGE FOR THE WEEK OF 11/20/01	-3.20	-10.22

NEW BALANCE AS OF THIS STATEMENT -----> -10.22

Note: It is clear that from October, through December, 2001, the plaintiff, will never be allowed to receive copies if he's held to the standard prison personnel has set because, he will never be clear of the rears long enough to accomplish anything.

B-2

CERTIFICATE OF SERVICE

The plaintiff Jason E. Benson, hereby certifies that on the date indicated below, the attached motion was mailed to the Court by first class mail.

Date December 10, 2001

By: 

Jason E. Benson, Plaintiff
DS-6483, SCI-Smithfield
1120 Pike St., P.O. Box 999
Huntingdon, PA 16652

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

December 13, 2001

Re: 1:00-cv-01229 Benson v. Duran

True and correct copies of the attached were mailed by the clerk
to the following:

David L. Schwalm, Esq.
Thomas, Thomas & Hafer, LLP
305 North Front Street
Sixth Floor, P.O. Box 999
Harrisburg, PA 17108

Alan S. Gold, Esq.
Monaghan & Gold, P.C.
7837 Old York Road
Elkins Park, PA 19027

James D. Young, Esq.
Lavery & Associates, P.C.
301 Market Street
P.O. Box 1245
Suite 800
Harrisburg, PA 17108-1245

cc:		
Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen ()

Jrs 12/13/01